REMARKS

This communication is a full and timely response to the aforementioned non-final Office Action dated December 1, 2005. By this communication, claims 12, 45, 76, and 113 have been cancelled without prejudice or disclaimer to the underlying subject matter. Further, claims 1-11, 13-44, 46-75, 77-112, and 114-135 have been amended. Claim 1 has been amended to include the subject matter of claims 8 and 12, claim 35 has been amended to include the subject matter of claims 41 and 45, claim 68 has been amended to include the subject matter of claims 75 and 79, and claim 102 has been amended to include the subject matter of claims 109 and 113. Support for the subject matter recited in claims 1, 35, 68, and 102 can be found in the original filed application. Claims 1-11, 13-44, 46-75, 77-112, and 114-135 are pending.

Objections to the Specification

The Specification was objected to for having alleged informalities. Applicants have amended the Specification in a manner to address the Examiner's concerns. Applicants respectfully request that the objection to the Specification be withdrawn.

Rejections Under 35 U.S.C. §102

Claims 1, 4, 5, 37, 38, 68, 70, 72, 102, 104, and 106 were rejected under 35 U.S.C. §102(e) as anticipated by *Thompson et al* (U.S. Patent Pub. No. 2002/0077900). Applicants respectfully traverse this rejection. However, in an effort to expedite prosecution independent claims 1, 38, 68, and 102 have been amended to include the subject matter of dependent claims 8, 12, 41, 45, 75, 79, 109, and 113 where applicable. Accordingly, this objection is moot and Applicants respectfully request that the rejection of these claims under 35 U.S.C. §102 be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 12-14, 21-23, 45-47, 54, 56, 79, 80, 88-90, 113, and 122 were rejected under 35 U.S.C. §103(a) as unpatentable over *Thompson*. Applicants respectfully traverse this rejection. Because independent claims 1, 35, 68, and 102 were amended to include the subject matter previously recited in claims 12, 45, 76, and 113, respectively, the rejection of claims 1, 35, 68, and 102 will be addressed with respect to this rejection.

In an exemplary embodiment of the invention as shown, for example, in Figs. 1-4, a computer network 10 includes a user computer 12 and a plurality of servers 14. Web pages and downloadable video files are stored at each server 14. The user computer 12 and each of the servers are connected via the Internet. To play a video file the computer must access the file across the Internet and retrieve that file from the server 14. Each video file includes a header 36 and the header includes a mode flag 38. The user computer 12 downloads a video file 32 in response to a request. The request is made by selecting a link 46 that is associated with the video file 32 on a user interface of the user computer 12. Browser software 24 in the user computer 12 detects a header 36 of the downloaded video file 32. When the browser software 24 detects the header 36 it launches the video player 26. The video file 32 is encoded with a plurality of tracks such as a video track 40, an audio track 42, and a sprite track 44. The sprite track 44 contains instructions that are readable by the video player 26. The video player 26 displays in the window of the video player information, associated with the instructions. Instructions that may be included in the sprite track 44 may also relate to the download status of the video file 32. In this case, the player 26 will display at least one status indictor in response to this instruction.

Independent claims 1, 35, 68, and 102 each recite, among other elements, inserting a first instruction relating to a download status of said video file where said displaying in response to said first instruction includes displaying at least one status indicator.

Thompson discloses delivering interstitial media content during a user's navigation of an Internet product, such as a graphical user interface. In delivering the media content, a user requests the delivery of data to the user requested address (URL). After the user's request, a remote data server D detects this request. Next, the first remote server D determines if an ad timer has been defined. If the ad timer has been defined and has not elapsed the remote server D delivers the contents of the URL to the user's location and awaits the next user address request. The delivery of the data may include the remote data server sending a web page having an embedded media player to the user address. The media player provides a visual display to the user which includes all types of video or audio visual content. The Office Action acknowledges that *Thompson* fails to disclose or suggest inserting a first instruction leading to a download status of said video file, as recited in the independent claim. The Examiner takes Official Notice to remedy this deficiency.

The mere taking of Official Notice is not sufficient to render the claimed combination of elements obvious. More importantly, by taking Official Notice and failing to provide any documentary evidence, the Examiner has not proven the validity of this position. In fact, Applicants traverse the Examiner's rejection because without any evidence otherwise, Applicants believe that the first instruction relating to a download status, as recited in claims 1, 35, 68, and 102, is not capable of instant and unquestionable demonstration as being well known at the time the instant application was filed.

In a memo to the examining core and technology center directors, Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, stated that reliance on "official notice"

when an application is under final rejection should be rare. *See* "Procedures for Relying on Facts Which are not of record as common knowledge or for taking official notice," United States Patent and Trademark Office, memo from Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, page 2 (February, 2002). Moreover, Mr. Kunin stated, "[o]fficial notice unsupported by documented evidence should only be taken by the examiner where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known." *See* Id. "it would not be appropriate for the Examiner to take an official notice of facts without citing a prior art reference where the facts are asserted to be well known are not capable of instant and unquestionable demonstration as being well known." *See* Id.

In addition, if the Examiner believes that the claimed subject matter reads on a prior art reference, Applicants hereby request that the Examiner either:

(a) provide another non-final office action withdrawing official notice, and applying a suitable reference for the asserted rejection; or

(b) issue another rejection under an appropriate statutory provision and provide an affidavit or suitable reference attesting to all the elements taken as official notice.

By this reply, Applicants have timely challenged the Examiner's official notice.

Claims 3, 35, 71, and 105 were rejected under 35 U.S.C. §103(a) as unpatentable over *Thompson* in view of *Yagasaki et al* (U.S. Patent No. 5,862,300). Applicants respectfully traverse this objection.

Claims 3, 71, and 105 depend from claims 1, 68, and 102, respectively. Independent claim 35 recites, among other elements, that one of said instructions is a first instruction leading to a download status of said video file. The Examiner acknowledges that *Thompson* fails to disclose or suggest as least this claim element, and takes official notice to remedy this

deficiency. The Examiner applied *Yagasaki* to allegedly teach reading a header of a video file and displaying the video file in a specified mode, as recited in the aforementioned claim. Applicants submit that even if *Yagasaki* teaches this claim element, which Applicants do not acknowledge that it does, *Yagasaki* still fails to remedy the deficiencies of *Thompson* and the Official Notice. For at least this reason, Applicants respectfully submit that a *prima facie* case of obviousness has not be established.

To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, obviousness "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hospital Systems v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). For at least the above reasons, Applicants request that the rejection of claims 3, 35, 71, and 105 be withdrawn and these claims be allowed.

Claims 7-11, 15, 19, 20, 40-43, 52, 53, 74-78, 86, 87, 108-112, and 119-121 were rejected under 35 U.S.C. §103 as unpatentable over *Thompson* in view of *Abato et al* (U.S. Patent No. 6,513,069). Applicants respectfully traverse this rejection. These claims variously depend from independent claims 1, 35, 68, and 102. By virtue of this dependency, Applicants submit that the above reference claims are allowable for at least the same reasons given above with regard to their respective claims. In addition, Applicants submit that these claims are further distinguishable over *Thompson* and *Abato* by the additional elements recited therein. In particular, Applicants respectfully submit that *Abato* fails to remedy the deficiencies of both *Thompson* and the taking of Official Notice and fails to recite at least a first instruction leading to a download status of said video file. Accordingly, Applicants

respectfully request that the rejection of claims 7-11, 15, 19, 20, 40-43, 52, 53, 74-78, 86, 87 108-112, and 119-121 under 35 U.S.C. §103 be withdrawn, and these claims be allowed.

Claims 27-31, 58, 60-64, 92, 94-98, and 128-132 were rejected under 35 U.S.C. §103(a) as unpatentable over *Thompson* in view of *Abato* and further in view of *LaJoie et al* (U.S. Patent No. 6,049,333). Applicants respectfully traverse this rejection. The preceding claims variously depend from independent claims 1, 35, 68, and 102. By virtue of this dependency, Applicants submit that these claims are allowable for least the same reasons given above with regard to their respective base claims. In addition, Applicants submit that the aforementioned claims are further distinguishable over *Thompson*, *Abato*, and *LaJoie* by the additional elements recited therein. In particular, Applicants respectfully submit that *LaJoie* fails to remedy the deficiencies of *Thompson, Abato*, and the taking of official notice, and fails to recite at least a first instruction relating to a download status of said video file, as recited in independent claims 1, 35, 68, and 102. Accordingly, Applicants respectfully request that the rejection of claims 27-31, 58, 60-64, 92, 94-98, and 128-132 under 35 U.S.C. §103 be withdrawn, and these claims be allowed.

Conclusion

Based on at least the foregoing amendments and remarks, Applicants submit that claims 1-11, 13-44, 46-75, 77-112, and 114-135 are allowable, and this application is in condition for allowance. Accordingly, Applicants request a favorable examination and consideration of the instant application. In the event the instant application can be placed in even better form, Applicants request that the undersigned attorney be contacted at the number below.

Respectfully submitted,

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Date: March 1, 2006

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